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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11                  Jonathan E Ackerman,

12                  Petitioner,

CASE NO. 3:21-cv-05110-JCC-DWC

13                  v.

ORDER

14                  Mike Obenland,

15  
16                  Respondent.

17                  The District Court has referred this action filed under 28 U.S.C. § 2254 to United States  
18                  Magistrate Judge David W. Christel. Petitioner initiated this action challenging his state court  
19                  convictions and sentence. *See* Dkt. 1, 3. After review of the record, the Court directs Respondent  
to file a supplemental state court record and answer.

20                  Petitioner is in custody under a state court judgment and sentence imposed for his  
21                  conviction by guilty plea on one count of murder in the second degree. Dkt. 9, Exhibit 1,  
22                  Judgment and Sentence, Thurston County Cause No. 16-1-01859-34. Petitioner raises one  
23                  ground for relief alleging his due process rights were violated because the prosecutor's  
24                  statements during sentencing breached the plea agreement to recommend a 240-month sentence.

1 Dkt. 3. On April 15, 2021, Respondent filed, and served on Petitioner, an Answer. Dkt. 8, 9.  
 2 Respondent concedes the Petition is timely and that Petitioner exhausted his state court remedies.  
 3 Dkt. 8 at 6. Respondent asserts the state court's adjudication of the sole ground raised in the  
 4 Petition was not contrary to, or an unreasonable application of, clearly established federal law.  
 5 Dkt. 8.

6 In general, considerations of fundamental fairness require that "when a plea rests in any  
 7 significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of  
 8 the inducement or consideration, such promise must be fulfilled." *Santobello v. New York*, 404  
 9 U.S. 257, 262 (1971); *accord Gunn v. Ignacio*, 263 F.3d 965, 969 (9th Cir. 2001); *United States*  
 10 *v. Mondragon*, 228 F.3d 978, 980 (9th Cir. 2000). To determine whether a plea agreement has  
 11 been breached, courts consider what was "reasonably understood" by a defendant "when he  
 12 entered his plea of guilty." *Gunn*, 263 F.3d at 970; *United States v. Serrano*, 938 F.2d 1058, 1061  
 13 (9th Cir. 1991). "[T]he construction of the plea agreement and the concomitant obligations  
 14 flowing therefrom are, within broad bounds of reasonableness, matters of state law." *Ricketts v.*  
 15 *Adamson*, 483 U.S. 1,5 n. 3 (1987).

16 The Court has reviewed the Answer and finds relevant portions of the state court record,  
 17 including the plea agreement, were not included in state court record provided to the Court. *See*  
 18 Dkt. 8, 9. In order for the Court to properly consider the merits of Petitioner's sole ground for  
 19 relief, the Court must review the plea agreement.

20 Therefore, the Court directs Respondent to file a supplemental state court record on or  
 21 before July 16, 2021. The supplemental state court record should include the plea agreement and  
 22 any additional state court records relevant to this Court's determination. Respondent may also file  
 23 a supplemental answer limited to five pages addressing the supplemental state court record on or  
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1 before July 16, 2021. Petitioner may file a supplemental traverse addressing only the supplemental  
2 state court record and Respondent's supplemental answer limited to five pages on or before July  
3 30, 2021. Respondent may file a supplemental reply on or before August 6, 2021.

4 The Clerk of Court is directed to re-note the Petition (Dkt. 3) for consideration on August  
5 6, 2021.

6 Dated this 10th day of June, 2021.

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9 David W. Christel  
10 United States Magistrate Judge  
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